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Compliance in the 21st century: The exchange of tax information and the future of banking secrecy in Singapore

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The Limits of the Law: The Role of Compliance in the 21st century

**The exchange of tax information and the right to
privacy in Singapore**

Cambridge Economic Crime Symposium

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Issues

- Do the OECD enhanced transparency rules and exchange of information for tax purposes mark the beginning of an end for banking secrecy?
- Background: Singapore has endorsed the enhanced OECD standards in March 2009, and as at 2010, signed 19 protocols amending existing double taxation agreements or entered into new double taxation agreements which contain the enhanced OECD standards.

Issues

- A key feature of the OECD Standard is that an exchange of information through a Double Taxation Agreement should not be constrained by banking secrecy under domestic laws;
 - Previously IRAS may exchange information only if it has the information or is able to obtain the information to enforce its own tax laws;
 - Now, IRAS can obtain information under a prescribed DTA, even if the information request does not relate to a Singapore tax matter, provided that the information has been requested in accordance with the Eol provision of that prescribed DTA
 - IRAS now can obtain information from banks, for its own domestic tax matters as well as compliance with request from a DTA partner, which was previously bound by confidentiality provisions under Banking Act (Cap 19)
- On the issue of the rights of the affected parties (taxpayer and bank), they are protected:
 - Apart from certain exceptional circumstances (e.g. where such notice will prejudice investigation into an alleged breach of tax laws), IRAS must serve a notice of request on the affected parties when it receives a request pursuant to a prescribed DTA for information about the taxpayer; and
 - After the court order is served, the affected parties may, within seven days, apply to the Singapore High Court to have the order discharged or varied.

Trends

In May 2013, other measures were proposed to strengthen exchange of information framework, including:

- Extend EOI assistance in accordance with the Standard to all existing tax agreement partners, without having to update individually our bilateral tax agreements with them, subject to reciprocity.
- Sign the Convention on Mutual Administrative Assistance in Tax Matters. This was first developed as an OECD-Council of Europe agreement, and has been promoted as an international agreement for bilateral tax cooperation among the Convention's signatories.
- Allow IRAS to obtain bank and trust information from financial institutions without having to seek a Court Order.
- Conclude with the United States an Inter-Governmental Agreement (IGA) that will facilitate financial institutions in Singapore to comply with the Foreign Account Tax Compliance Act (FATCA).

Considerations

- Will enhanced EOI for tax purposes lead to eventual undermining of banking secrecy? In particular:
 - Who assesses the legitimacy of the request?
(Streamlining the process v. protection of privacy of individual)

Trends

- Tangible benefit: Singapore is taken off the “grey list”
- Private banking and wealth management do not appear to be adversely affected
- Other possibilities in the future:
 - Currently, system is based on request; will automatic exchange of information permitted?
 - Extend exchange of information beyond tax?
 - Will current requirement for identification individual and where information is held (prevent fishing expedition) be relaxed?